

Berliner Dep.

In The Matter Of:

*AHERF v.
PRICEWATERHOUSECOOPERS, LLP*

ROBERT BERLINER

February 16, 2005

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2 bad debt reserves at the DVOG hospitals at June
3 30, 1996 after the \$17-1/2 million adjustment,
4 is it not?

5 A. Slightly less. The adjustment
6 would have brought the reserve to 68 million.

7 Q. Have you performed any analysis of
8 whether some of the accounts that were written
9 off as part of this so-called \$80 million
10 write-off were impact collectible?

11 A. Very little. If I recall 3 million
12 is the total number that got collected.

13 Q. That's the amount that was in fact
14 subsequently collected, right?

15 A. Yes.

16 Q. I was asking a slightly different
17 question which is, did you perform an analysis
18 as to the amount that was collectible at the
19 time of the write-off if AHERF management had
20 tried?

21 A. I did not do that, but it's my
22 understanding that the outsourcer of that who
23 was assigned the job of collecting the old
24 accounts had pretty much given up and it was
25 unlikely that further efforts would have been

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2 Q. Do you know whether Mr. Cancelmi or
3 anyone else at AHERF provided a copy of that
4 memo to Coopers & Lybrand?

5 A. I doubt that it was provided to
6 Coopers & Lybrand, but I don't know for certain.

7 Q. Why is it that you doubt that?

8 A. Because it's not necessarily common
9 that internal correspondence is provided to the
10 auditors.

11 Q. We discussed before that September
12 11, 1996 was the last date of substantial field
13 work for the 1996 audits, right?

14 A. Yes.

15 Q. Is it your understanding though
16 that at this time, as of September 24, 1996, the
17 audit report had not yet been released?

18 A. I believe that's correct.

19 Q. It is possible, is it not sir, that
20 if Coopers & Lybrand had received a copy of this
21 memo at that time or had otherwise learned that
22 AHERF financial was about to embark on a
23 write-off of about \$80 million on accounts
24 receivable that they might have taken some
25 actions in response to that, right?

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2 successful or cost effective.

3 Q. What is the basis for that
4 understanding that you just expressed?

5 A. Well, they have been at it for a
6 while and there comes a point where any further
7 efforts are unlikely to be successful and that
8 the amount of future success that would be
9 achieved would not be commensurate with the cost
10 of paying the outsourcer to achieve them. So
11 you would be losing money by collecting more
12 accounts rather than gaining money.

13 Q. A question that I meant to ask you
14 earlier today and I think I forgot to and I'm
15 going to ask you now is do you consider yourself
16 to be an expert sir in hospital billings or
17 collections?

18 MR. JONES: Object to form.

19 A. No, I don't.

20 Q. Could you turn to page 3-1 of your
21 report. You refer there right in the first
22 sentence of part 3 of your report to a
23 memorandum from Mr. Cancelmi to Mr. Spargo dated
24 September 24, 1996, is that right?

25 A. Yes.

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2 A. That's true, but I have to add that
3 your question touches on the principal
4 difference that I have with Mr. Tillett, because
5 I think in his report Mr. Tillett misconstrues
6 the responsibility of auditors in conducting a
7 GAAS audit. Auditors just can't sit and wait
8 for management to provide them with every bit of
9 information, auditors have an affirmative
10 responsibility to obtain sufficient competent
11 evidential matter on which to form their
12 opinion, and therefore the facts and
13 circumstances pertaining to the receivables at
14 DVOG were available to Coopers & Lybrand in my
15 opinion had they sought out the appropriate
16 people at AHERF and asked the appropriate
17 questions of those people.

18 Q. The fact that AHERF management had
19 formed the intent to do a write-off is not
20 something that would be available to Coopers &
21 Lybrand auditors other than being informed of
22 such by AHERF management, isn't that right?

23 MR. JONES: Object to form.

24 A. No, I don't necessarily agree with
25 that. I'm not by any means suggesting that

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2 AHERF management was totally above board and
3 totally forthcoming with Coopers by no means,
4 but I think it comes down to what is required of
5 an auditor, what's an audit all about. I
6 believe based upon my experience and my
7 understanding of GAAS, that an auditor has an
8 affirmative responsibility to seek out the facts
9 and circumstances from those people in the
10 client's organization in the best position to
11 know those facts and circumstances.

12 I have to believe, given the aging
13 of the DVOG accounts, that it would be
14 incompetence on the part of Coopers not to
15 perform the sufficient inquiry and other
16 procedures to raise the question of isn't it
17 appropriate to write-off some of these accounts,
18 they are so old you're not going to collect
19 them, and get out of the various people in
20 management the story and possibly the very
21 intent of doing the write-off.

22 Q. If I could ask you to jump ahead
23 for a moment to page 18-2 of your report. Do
24 you see that you set forth there in the middle
25 of the page rule 102 of the ethics code to which

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2 members of the AICPA are required to adhere, is
3 that right?

4 A. Yes, sir.

5 Q. That rule reads as follows "In the
6 performance of any professional service, a
7 member shall maintain objectivity and integrity,
8 shall be free of conflicts of interest and shall
9 not knowingly misrepresent fact or subordinate
10 his or her judgment to others", did I read that
11 right?

12 A. Yes, you did.

13 Q. Will you agree with me that members
14 of AHERF management did not comply with this
15 rule of ethics in their dealings with Coopers &
16 Lybrand?

17 MR. JONES: Object to form and
18 foundation.

19 A. First of all this rule would only
20 apply to those CPAs in AHERF's employ who were
21 members of the AICPA. The question is whether
22 they misrepresented facts to Coopers & Lybrand
23 or were merely not forthcoming in divulging what
24 a good financial management would divulge to its
25 auditors. There is a dispute in the evidence in

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2 the case that I've read as to whether or not the
3 additional Graduate transfers above the 50
4 million, the 49 million were conveyed to Coopers
5 by AHERF people or not conveyed. Whether they
6 were or not in my opinion is somewhat irrelevant
7 because the real question is even if they
8 weren't conveyed would the performance of a GAAS
9 audit have detected the transfer of the
10 additional reserves, in my opinion they would
11 have.

12 The auditor has a responsibility
13 under GAAS to plan his audit to detect errors
14 and irregularities. The mere fact that an
15 accounting error is intentional doesn't relieve
16 the auditor of any responsibility for failing to
17 detect it. If the auditor applies appropriate
18 auditing procedures they are not guaranteed by
19 any means to detect intentional errors but they
20 should fether out material errors, whether they
21 be intentional or unintentional, if they are
22 properly employed.

23 Q. I'm trying to ask you about
24 something a little bit different though, let me
25 try to ask it this way. Do you agree with me

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2 that members of AHERF management were not
3 forthcoming in their dealings with Coopers &
4 Lybrand in the course of the audits?

5 MR. JONES: Object to form.

6 A. I would say so.

7 Q. Do you agree with me that members
8 of AHERF failed to provide Coopers & Lybrand
9 with information that they should have provided
10 Coopers & Lybrand with?

11 MR. JONES: Same objection.

12 A. What information are you referring
13 to?

14 Q. I'm asking you for your view. My
15 question is, is it your view that members of
16 AHERF management failed to provide Coopers &
17 Lybrand with information that they should have
18 provided Coopers & Lybrand with?

19 MR. JONES: Same objection.

20 A. In my years of auditing I
21 encountered all kinds of management, it ran the
22 gamut from those who had presented to me on a
23 silver platter to others who were not
24 forthcoming and wouldn't tell me a thing, I had
25 to find out everything on my own. Depending

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 2 upon the differences in management the auditor
 3 modifies his auditing procedures to deal with
 4 those differences. I've read testimony that
 5 would contradict that fact that they were not
 6 forthcoming. Different AHERF people testified
 7 that they would have been available to provide
 8 information to Coopers had Coopers asked. In
 9 the area of the Lockhart Trusts I think a fellow
 10 by the name of Zwirn, if I got the name
 11 correctly, testified that he kept all of the
 12 agreements, trust agreements in a book and they
 13 were available had Coopers asked to see them.
 14 There's conflicting testimony along those lines.

15 A clearly complicating factor is
 16 the fact that some of these people were former
 17 Coopers auditors. Cancelmi was a well respected
 18 audit manager at Coopers who had a relationship
 19 with Buettner and Kirstein and Laing I believe
 20 was also an audit manager at Coopers. Do I
 21 believe that these people should have been more
 22 forthcoming, Laing and Cancelmi in dealing with
 23 Coopers yes, I do, I think they should have been
 24 more forthcoming. Did they lie, I can't say
 25 that they lied, I got conflicting evidence.

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 2 Whether they did or not, whether they should
 3 have been more forthcoming or not, I believe the
 4 documentation available to Coopers was such that
 5 had Coopers performed a GAAS audit they would
 6 have gotten to the right answer, and so I
 7 believe it was because of the failures to comply
 8 with GAAS that Coopers failed to detect all of
 9 the misstatements that were made of AHERF
 10 financial statements.

11 Q. Back when you were auditing you
 12 would have expected your clients to be more
 13 forthcoming with you than Dan Cancelmi and
 14 others were with Coopers & Lybrand, correct?

15 A. I had clients who were less
 16 forthcoming. I can recall vividly a situation
 17 where the CEO of a public company made a
 18 representation to me that didn't pass my
 19 personal smell test and I said to him I just
 20 need more. I hear what you're saying but that's
 21 not good enough for me, I need more. He said
 22 well what do you need, I said I have to go out
 23 to Los Angeles and I have to go to this company
 24 you acquired and I have to go and look at some
 25 information there. He says okay, if that's what

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 2 you have to do, do it. So I went and I found
 3 information that totally contradicted what I was
 4 told by the CEO of that public company. The end
 5 result the board fired the CEO, the financial
 6 statements were restated and I gave a clean
 7 opinion on the restated financial statement.
 8 They were never issued, the corrected financial
 9 statements.

10 So I believe in that instance I did
 11 what GAAS required me to do, evaluate the -- ask
 12 the inquiries of the appropriate people,
 13 evaluate the responses, shoot them up the flag
 14 pole, see if they fly and if they don't, perform
 15 extended procedures and I think that's what
 16 should have been done in the Cooper's audit.

17 Q. Can you tell me what the name was
 18 of that company?

19 A. The name of that company?

20 Q. Yes.

21 A. It was called American Beverage,
 22 they made the Hoffman line of beverages which to
 23 New Yorkers was a famous brand and also Dr.
 24 Brown's which is still around, it's sold in all
 25 of the kosher delicatessens in the city and they

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 2 had many other brands.
 3 Q. Have you ever had in your career
 4 any other experience like the one that you
 5 described at American Beverage?
 6 A. Yes, I did.
 7 Q. What was that experience?
 8 A. It was with a company called
 9 Nickelberry that had been a long-standing client
 10 of our Chicago office where there was a
 11 management change and the company relocated to
 12 New York. The company took a position that they
 13 had made a decision to dispose of a line of
 14 business during the year and therefore in the
 15 financial statements they wanted to release they
 16 categorized the operations of this line of
 17 business as a discontinued operation.

18 I'll never forget the situation, we
 19 were working lengthy hours and one night about
 20 8:30 I asked my team, I was the partner and I
 21 asked my team look, I've got to leave now, is
 22 there anything I can read on the train and the
 23 answer was well, why don't you take the minutes
 24 of the board of directors. So I took the
 25 minutes of the board of directors meetings and

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2 A. Yes.

3 Q. In this letter Ms. Robinson on
4 behalf of Mellon Bank takes the view that the
5 language for several of the Lockhart trust
6 agreements is quite explicit for capital gains?

7 A. Four out of five.

8 Q. The point she's making is that they
9 are explicit in her review that capital gains
10 become part of the corpus and therefore are
11 restricted, right?

12 A. Yes. The fifth one is really very
13 immaterial to the five, this is by far the
14 smallest in dollar amount.

15 Q. Is it your understanding that AHERF
16 management did not provide this document to
17 Coopers & Lybrand in connection with either the
18 1996 or 1997 audits?

19 A. That's my understanding.

20 Q. Is this another example of
21 something where you would have expected in AHERF
22 management to be above board and to have
23 provided the document?

24 MR. JONES: Object to form.

25 A. Yes.

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2 Q. Have you seen before this note here
3 that Mr. Spargo has written on the memo which
4 reads "Al and Dan, this little pickle may
5 require a tad bit more creativity than even we
6 are normally accustomed to, perhaps we can
7 discuss at our next weekly meeting. Thanks,
8 Steve"?

9 A. Yes.

10 Q. Do you have a reaction to that
11 note?

12 MR. JONES: Object to form.

13 A. Yes, my reaction to that note is
14 that Mr. Spargo is essentially saying that it
15 would be tough to explain this thing.

16 Q. It indicates to you, doesn't it,
17 that AHERF management knew that what they were
18 doing was wrong?

19 MR. JONES: Object to form,
20 foundation.

21 A. That would suggest that.

22 Q. And yet they didn't tell their
23 auditors?

24 A. That's my understanding.

25 Q. Is it your understanding that AHERF

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2 maintained copies of its endowment agreements in
3 three-ring binders?

4 A. That's my understanding.

5 Q. Three-ring binders from which one
6 could remove individual pages, potentially,
7 right?

8 A. Yes.

9 Q. Do you know what pages of the
10 Lockhart trust agreements were contained in
11 those three-ring binders when they were provided
12 to Coopers & Lybrand auditors?

13 A. I do not.

14 Q. Do you know whether the provision
15 of the letter from Mellon Bank that has been
16 marked as Exhibit 20 would have made any
17 difference to the report that Coopers & Lybrand
18 issued?

19 MR. JONES: Object to foundation.

20 A. All I can tell you is I read the
21 deposition testimony of Ben Corbley and Mel Hope
22 and Sepelia and Staldard and they were part of
23 the '98 restatement team and it certainly made a
24 difference to them, so I think the answer is
25 yes. I think this is another one of the areas

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2 that really illustrates my view and I didn't
3 comment on it earlier and that is that I think
4 even with whatever subterfuge was carried on
5 here on the part of AHERF management, the
6 accounting misstatements should have been
7 detected by the auditors. I have two principal
8 reasons for that, one is an understanding of
9 what 116 and 117 did to change GAAP and it's
10 pretty simple.

11 Generally speaking there were two
12 categories heretofore, restricted and
13 unrestricted, and what these statements did was
14 to pretty much leave the unrestricted unchanged
15 but to break out a restricted into temporarily
16 restricted and primarily restricted. Now, we
17 begin the year with the ending year '95 balances
18 where there's a huge number in restricted and a
19 relatively small number in unrestricted. What
20 does that mean, well, again we said earlier that
21 one of the things the auditors should do in
22 conducting an audit is to have an understanding
23 of the client, the business, so on and so forth.

24 So after many years of conducting
25 these audits of the AHERF system it would seem

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2 to me that it would only be reasonable to expect
3 Coopers & Lybrand to have an understanding that
4 these Lockhart trusts go back many, many years
5 to the '20s and '30s and so forth and that the
6 original grants grew over time because of
7 unrealized gains to become big dollar amounts.

8 Now, if they are restricted at the
9 end of '95 what is it that happened that would
10 make them temporarily restricted in '96, it
11 would have to be something. Why would they be
12 temporarily restricted and remain temporarily
13 restricted for all these many, many years.
14 Temporarily restricted is a category that refers
15 to restrictions that will lapse with the
16 performance of certain acts or with the passage
17 of time. Well clearly here they didn't lapse
18 with the passage of time, they were restricted
19 for 50 years.

20 So the odds on would be that the
21 auditors would have an expectation that they
22 would be permanently restricted and not
23 temporarily restricted, which would lead I think
24 to a higher level of skepticism when they see
25 the client putting the bulk of the money into

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2 the temporarily restricted, that's the first
3 point.
4 The second point which is maybe
5 even more powerful is the fact that how come if
6 they were temporarily restricted the Mellon Bank
7 as the trustee was not passing the money on to
8 AHERF for AHERF to use in its operations. I
9 think you have those two factors there that are
10 very, very significant and certainly require the
11 auditor to recognize that uh oh, I'm in a high
12 risk area here, this thing doesn't smell so
13 good, I have to do some extended procedures and
14 that's where I come back to the first point of
15 getting ahold of the trustee and asking the
16 trustee for an interpretation.

17 Had they done that they would have
18 gotten an interpretation which made this letter
19 moot, because even though the client was trying
20 to keep this from them they would have found it
21 out on their own by performing what would only
22 be considered to be appropriate auditing
23 procedures under the circumstances.

24 Q. Are you aware of the fact that FAS
25 116 and 117 permits the recognition of the

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2 expiration of restrictions prospectively?

3 MR. JONES: Object to form.

4 A. What does it mean prospectively, I
5 don't quite understand.

6 Q. That is you don't have to go back
7 and see whether the expirations expired between
8 the time of contribution and the time of
9 adoption of FAS 116 and 117. That you can start
10 from the time of adoption in terms of whether
11 the restrictions have expired or not?

12 A. Yes.

13 Q. So therefore with respect to the
14 Lockhart trusts, that's why the expiration from
15 restrictions were occurring in fiscal years 1996
16 and 1997 without regard to whether those same
17 restrictions would have expired in the 1920s and
18 '30s and '40s and '50s if FAS 116 and 117 had
19 been effected so many years ago, right?

20 MR. JONES: Objection to form and
21 foundation?

22 A. We're not talking about them
23 expiring, we are talking about them still be
24 temporarily restricted as of the beginning of
25 '96. They took them from temporarily restricted

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2 to unrestricted in '96 and 97. It's not that
3 they classified them as unrestricted at the
4 beginning of '96, so I don't quite understand
5 how that facet of 116 and 117 are meaningful to
6 the discussion we've been having.

7 Q. If I understand the point you are
8 making, you don't understand how it could be
9 that the capital gains are the funds that for
10 many years have been classified as restricted,
11 now all of a sudden after the adoption of FAS
12 116 and 117 were going to be classified as
13 temporarily restricted, right?

14 A. Yes.

15 Q. Let me ask you a question about the
16 iron curtain method of preparing the summary of
17 un-adjusted differences, is that a term with
18 which you are familiar?

19 A. Yes.

20 Q. Do you agree with me that the iron
21 curtain method is an acceptable method under
22 GAAS for aggregating audit differences and
23 evaluating their impact on the financial
24 statements year to year?

25 MR. JONES: Object to form.

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1 A. I ran into this situation when I
2 was chairing the task force on risk and
3 materiality, we tried mightily to resolve that
4 by providing guidance and there was a divergence
5 of views among the accounting firms and we
6 couldn't resolve it, and we essentially copped
7 out by putting a footnote that I drafted into
8 the statement that said that that's essentially
9 an accounting matter and it's a matter for the
10 FASB to deal with, not the Auditing Standards
11 Board, so we left it unresolved.

12 However, when you read the bulk of
13 SAS 47 it leads you away from that method.
14 Admittedly it's not the clearest thing in the
15 world because we couldn't make it the clearest
16 thing in the world. We have here a multitude of
17 adjustments and I think you have to consider
18 them in their entirety. So while I was aware of
19 Coopers' preference for the iron curtain method,
20 I found many more misstatements than Coopers
21 detected. So my misstatements when taken in the
22 aggregate were so material to the prior years
23 that they demanded in my opinion prior period
24 treatment.

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1 Q. I understand that that is your view
2 and you've expressed that in your reports, I'm
3 attempting to ask you much more basic questions
4 first. Do you agree with me that both the iron
5 curtain method and the rollover method of
6 preparing the SUD are permissible methods under
7 SAS 47?

8 A. Yes.

9 Q. Am I right that you personally
10 apparently prefer the rollover method?

11 A. Yes.

12 Q. Is that perhaps because the Arthur
13 Young firm at which you started out used the
14 rollover method?

15 A. Yes.

16 Q. You've known for many years now
17 that the Coopers & Lybrand firm had a preference
18 for the iron curtain method, right?

19 A. Yes.

20 Q. Is it your understanding that the
21 audit engagement team for the AHERF audits
22 applied the iron curtain method consistently
23 from year to year?

24 A. Yes.

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1 Q. Would you agree with me that that's
2 the most important method that you apply
3 consistently from year to year and not switch
4 methods from year to year?

5 A. Yes.

6 Q. One of the accounting issues that
7 you raise in your report has to do with an
8 equity interest that AHERF had in an enterprise
9 called Health Partners, right?

10 A. That's correct.

11 Q. There was an error in AHERF's
12 accounting treatment for that that Coopers &
13 Lybrand detected in the course of its fiscal
14 year 1995 audit, right?

15 A. That's correct.

16 Q. Coopers & Lybrand posted that error
17 to the fiscal year 1995 SUD and determined that
18 it was immaterial, right?

19 A. Yes.

20 Q. AHERF corrected the error in the
21 following year, fiscal year 1996, right?

22 A. Yes.

23 Q. Is it the case then that under the
24 iron curtain approach to the SUD, Coopers &
25

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1 Lybrand properly did not need to make an SUD
2 entry in fiscal year 1996?

3 A. Correct.

4 Q. So do you agree that the way
5 Coopers & Lybrand handled the Health Partners
6 equity investment was appropriate?

7 A. Under the iron curtain method, yes.

8 MR. JONES: Object to form.

9 Q. Let me ask now about capitalized
10 interest. Is it your understanding that in
11 fiscal year 1995 and prior years AHERF did not
12 capitalize interest?

13 A. Right.

14 Q. Is it your understanding that GAAP
15 states that interest on construction and
16 process, if material, ought to be capitalized?

17 A. Yes.

18 Q. Coopers & Lybrand in the course of
19 its 1995 audit detected the fact that AHERF had
20 not capitalized interest, right?

21 A. Yes.

22 Q. Coopers & Lybrand posted an entry
23 for instance to the AGH SUD, right?

24 A. Right.

55 (Pages 214 to 217)

ERRATA

I, Robert Berliner, wish to make the following changes, for the following reasons:

PAGE LINE

CHANGE:

REASON:

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See attached.

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REASON:

Robert W. Berliner
ROBERT BERLINER

Subscribed and sworn to before me

this 16 day of March, 2005.

Bette Heiman
Notary Public

BETTE HEIMAN
NOTARY PUBLIC, State of New York
No. 31-683970
Qualified in New York County
Commission Expires March 30, 2006

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
OF ALLEGHENY HEALTH, EDUCATION AND RESEARCH FOUNDATION

vs

PRICEWATERHOUSECOOPERS, LLP

Civil Action Case No. 00-684 (W.D.Pa.)

ERRATA SHEET RE DEPOSITION OF ROBERT BERLINER
ON FEBRUARY 16, 2005

<u>Page:Lines</u>	<u>Comment</u>	<u>Reason</u>
8:18	"confidence" should be "covenants"	Correction/Clarification
18:16	"Sherry" should be "Sherrie"	Correction/Clarification
23:24	"weren't" should be "were"	Correction/Clarification
23:25	"this" should be "these"	Correction/Clarification
29:17	delete "Young"	Correction/Clarification
29:18	"Adam Zack" should be "Adamczak"	Correction/Clarification
33:4	"affect" should be "effect"	Correction/Clarification
42:15	"offering" should be "operating"	Correction/Clarification
43:8-9	"in the proceeding" should be "and the preceding"	Correction/Clarification
44:19	"affect" should be "effect"	Correction/Clarification
45:17	"affect" should be "effect"	Correction/Clarification
46:9	"affect" should be "effect"	Correction/Clarification
46:24	"vesting" should be "investing"	Correction/Clarification
48:7	"affect" should be "effect"	Correction/Clarification
49:4	"affect" should be "effect"	Correction/Clarification

<u>Page:Lines</u>	<u>Comment</u>	<u>Reason</u>
49:22	"affect" should be "effect"	Correction/Clarification
60:8	"is" should be "it"	Correction/Clarification
70:19	"AICPA," should be "AICPA	Correction/Clarification
70:22-23	"an AICPA, SOP 00-01" should be "an AICPA SOP, 00-01,"	Correction/Clarification
71:14	"00-1" should be "00-01"	Correction/Clarification
72:5-6	"in 00 in that 001" should be "that the 00 in 00-01"	Correction/Clarification
80:2	"order to submit a" should be "auditor submitted"	Correction/Clarification
89:19	"of" should be "from"	Correction/Clarification
103:17	"you used" should be "used"	Correction/Clarification
104:21	"you" should be "that"	Correction/Clarification
106:2	"the" should be "their"	Correction/Clarification
106:21-22	"the DVOG hospitals" should be "for the DVOG hospitals"	Correction/Clarification
106:24	"were" should be "were,"	Correction/Clarification
107:8	"accounts" should be "accounts."	Correction/Clarification
107:8	"also" should be "Also,"	Correction/Clarification
109:2	"where when" should be "where"	Correction/Clarification
110:7	"a" should be "the"	Correction/Clarification
110:13	"date, that" should be "date. That"	Correction/Clarification
121:8	"I in" should be "I, in"	Correction/Clarification
121:9	"errors" should be "errors,"	Correction/Clarification

<u>Page:Lines</u>	<u>Comment</u>	<u>Reason</u>
121:10	"FIN 14" should be "FIN 14,"	Correction/Clarification
132:22	"Franz" should be "Laing"	Correction/Clarification
134:17	"if anything" should be ", if anything"	Correction/Clarification
135:4	"personal financial" should be "corporate support"	Correction/Clarification
136:10	"assets are limited" should be "assets limited"	Correction/Clarification
138:10	"impact" should be "in fact"	Correction/Clarification
139:2	"successful or cost effective" should be "successful."	Correction/Clarification
139:7 139:7-12	"successful" should be "successful." delete "and that" on line 7 and all of lines 8-12	Correction/Clarification
144:10	"reserves, in" should be "reserves. In"	Correction/Clarification
144:20	"fetter" should be "ferret"	Correction/Clarification
149:9	"Nickelberry" should be "Mickleberry"	Correction/Clarification
149:15	"release" should be "reclass"	Correction/Clarification
151:5	"responsibilities, otherwise" should be "responsibilities. Otherwise"	Correction/Clarification
151:6	"public, readers" should be "public? Readers"	Correction/Clarification
151:21	"Nickelberry" should be "Mickleberry"	Correction/Clarification
152:23	"management" should be "matter"	Correction/Clarification
156:7	"a client" should be "the client"	Correction/Clarification
156:12	"in a whole" should be "as a whole"	Correction/Clarification
160:20	"evaluate on" should be "evaluate"	Correction/Clarification

<u>Page:Lines</u>	<u>Comment</u>	<u>Reason</u>
169:23	"until which" should be "which"	Correction/Clarification
170:7	"to side" should be "top side"	Correction/Clarification
174:23-178:9	Add: "With the benefit of a review of Mr. Buettner's 'top-side analysis,' which was not provided to me during my deposition, and certain of his testimony, I agree that Mr. Buettner has testified that certain of the notes on the second page of that 'analysis' reflect the claimed impact of payment slowdowns and unapplied cash."	Correction/Clarification
176:8	"a reserve" should be "reserve"	Correction/Clarification
179:3	"grows" should be "gross"	Correction/Clarification
181:20	"finances" should be "financials"	Correction/Clarification
182:22	"assureds" should be "assurance"	Correction/Clarification
183:18	"property planned equipment" should be property, plant and equipment"	Correction/Clarification
184:8	"property planned equipment" should be property, plant and equipment"	Correction/Clarification
187:18-19	"further or for areas" should be "further errors"	Correction/Clarification
190:18	"statements" should be "misstatements"	Correction/Clarification
191:8	"going on development" should be "development going on"	Correction/Clarification
193:20	"liability, there" should be "liability? There"	Correction/Clarification
193:23	"and the fact that not only" should be "not only"	Correction/Clarification

<u>Page:Lines</u>	<u>Comment</u>	<u>Reason</u>
194:2	"so far" should be "so far,"	Correction/Clarification
194:3	"is to the" should be "and the"	Correction/Clarification
204:18-19	"trustee. Particularly since the trustees" should be "trustee, particularly since the trustee"	Correction/Clarification
208:21	"Ben Corbley" should be "Ben Korbly"	Correction/Clarification
208:22	"Sepelia and Staldard" should be "Cepeilik and Stalder"	Correction/Clarification
209:15	"a restricted" should be "the restricted"	Correction/Clarification
210:7	"unrealized" should be "realized and unrealized"	Correction/Clarification
212:23	"still be" should be "still being"	Correction/Clarification
213:5	"are meaningful" should be "is meaningful"	Correction/Clarification
217:16-17	"construction and process" should be "construction in process"	Correction/Clarification
217:24	"instance" should be "interest"	Correction/Clarification
218:21	"amount and the 1996 amounts" should be "amounts and the 1996 amount"	Correction/Clarification
218:23-24	"required under the iron curtain method" should be "required, under the iron curtain method,"	Correction/Clarification
219:2	"correction," should be "correction."	Correction/Clarification
219:2	"AHERF instead I believe" should be "AHERF instead, I believe,"	Correction/Clarification

<u>Page:Lines</u>	<u>Comment</u>	<u>Reason</u>
219:3	"and on the DVOG piece" should be "and, on the DVOG piece,"	Correction/Clarification
219:4	"2 million credited to the bad debt reserve," should be "2 million, credited it to the bad debt reserve."	Correction/Clarification
219:5	"that's just wrong and required to me" should be "That's just wrong and required, to me,"	Correction/Clarification
219:12	"capitalize" should be "capitalized"	Correction/Clarification
220:4	"whatsoever, what" should be "whatsoever. What"	Correction/Clarification
220:6	"CRA reserves, what" should be "CRA reserves? What"	Correction/Clarification
220:7	"bad debt reserve, absolutely nothing" should be "bad debt reserve? Absolutely nothing."	Correction/Clarification
220:9	"what does it tell you, to me the years get wide" should be "what does it tell you? To me, the ears get wide,"	Correction/Clarification
220:13	"things, it looks" should be "things. It looks"	Correction/Clarification
220:16	"thing, it requires extended procedures, it even" should be "thing. It requires extended procedures. It even"	Correction/Clarification
220:17	"requires I think" should be "requires, I think,"	Correction/Clarification
220:20	"okay," should be "okay,"	Correction/Clarification
220:24	"that that's okay, it's" should be "and that's okay." It's"	Correction/Clarification
224:11	"condition" should be "within"	Correction/Clarification

<u>Page:Lines</u>	<u>Comment</u>	<u>Reason</u>
224:24	"fortune" should be "portion"	Correction/Clarification
224:25	"be captured" should be "recapture"	Correction/Clarification
232:7	"were now false?" should be "were not false?"	Correction/Clarification
234:22-23	"material in the state that they exist?" should be "material misstatements that exist?"	Correction/Clarification
234:25	"too" should be "to"	Correction/Clarification
253:20	"unreportable conditions" should be "reportable conditions"	Correction/Clarification
254:20	"equipment" should be "equivalent"	Correction/Clarification
255:5	"was" should be "was,"	Correction/Clarification
285:19	"was" should be "with"	Correction/Clarification

Robert W. Berlani

Brenner Dep.

In The Matter Of:

***AHERF v.
PRICEWATERHOUSECOOPERS***

RALPH W. BRENNER

September 30, 2003

***LEGALINK MANHATTAN
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New York, NY 10170
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BRENNER, RALPH W.



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1 Ralph W. Brenner, Esquire
2 didn't see you at the meeting or after the meeting I
3 never did get a chance to talk to you, but here are
4 my thoughts. But the real purpose of the discussion
5 was to make the pitch. I never wrote him back or
6 talked to him again I don't think.

7 Q. So did you tell him earlier that we didn't
8 receive timely and accurate financial information on
9 an ongoing basis and then he kind of put it back to
10 you?

11 MS. MEADEN: Objection.

12 A. I don't recall that.

13 Q. You don't recall?

14 A. I don't recall having said that. I can't
15 remember the man and I am troubled by what his
16 position was even on the audit committee. I don't
17 know whether he was there in some advisory sense or
18 whether he -- because I never attended the meetings,
19 I didn't get to meet all of these people, so I think
20 if I was there it was sort of after it, hi, I'm Cook
21 and there must have been some presentation and he
22 said I have some concerns and I probably said --
23 listened to him and said, yeah, there are some
24 concerns, but I didn't get into -- he was now, as I
25 see it, laying out his specific concerns, which I

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1 Ralph W. Brenner, Esquire
2 don't know whether I shared or didn't share at that
3 point in time.

4 I did, as I said before, express some
5 concern myself as to the overall situation.

6 Q. Right. Okay.

7 Up until the time of Mr. Abdelhak's
8 termination, did you have confidence at all times in
9 his integrity?

10 A. Define for me the word "integrity."

11 Q. His honesty.

12 A. I had no reason to question his integrity. I
13 questioned his judgment. I questioned whether he
14 was -- I questioned his ego. I questioned whether
15 he was a man who had set a course and was unwilling
16 to deviate from it regardless of some of the
17 consequences, but I certainly don't think I had a
18 sense of distrust. Maybe I should have, but I
19 didn't. I don't think I did.

20 Q. When did you first have the feeling that you
21 questioned his ego, as you described it?

22 A. It is hard to put these things together. I
23 think it was before the Graduate situation.

24 Q. Do you know whether any other trustees had
25 the same kinds of concerns?

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1 Ralph W. Brenner, Esquire

2 A. Are you talking about integrity now, or are
3 you talking about judgment or -- your question was
4 integrity.

5 Q. My question was integrity.

6 A. And I said I don't have any reason to believe
7 that.

8 Q. Right. And then you --

9 A. I said I had questions about other aspects.

10 Q. Right. Those other aspects, ego, et
11 cetera --

12 A. I have no way of specifically knowing, but I
13 certainly had the sense that others questioned
14 certainly some of those traits. In other words, was
15 he too headstrong on some of these positions he was
16 taking and whether he was somehow as flexible as we
17 would have liked him to be.

18 Q. Do you recall any other trustees questioning
19 his integrity?

20 A. Certainly not before he was terminated. I
21 mean there may have been other people that knew
22 things that I didn't know. All I'm saying is I
23 don't recall anybody specifically saying that to me.

24 Q. Okay. I'm just here to get your
25 understanding.

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1 Ralph W. Brenner, Esquire

2 A. Yeah.

3 Q. What about Mr. McConnell; did you ever have
4 concerns about his integrity up until the time that
5 he was terminated?

6 A. Once again, I don't believe I had any
7 questions about his integrity; however, I had some
8 serious questions as to the accuracy of all of the
9 financial dealings that were being suggested in
10 connection with some of the transactions. I say
11 that recognizing that I am not an accountant. I
12 have already admitted to not being the guru in the
13 area of the financial world, but I do listen and I
14 do try and pay attention and I was somewhat
15 mystified by some of the suggestions of how some of
16 these transactions, particularly the latter ones,
17 maybe Graduate as much as any, were to come into
18 being.

19 Q. Can you remember anything specifically that
20 mystified you about that?

21 A. No, no, I just knew I sat there and said, you
22 know, I'm trying, but it's too complicated to work
23 in the way that they are suggesting.

24 Q. Just to finish the topic, do you know of
25 anyone else who had those same concerns on the

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1 Ralph W. Brenner, Esquire
 2 board?
 3 A. No.
 4 Q. And do you know of anyone else who voiced a
 5 concern about Mr. McConnell's integrity?
 6 A. No.
 7 Q. You mentioned that you don't recall --
 8 A. I should say I can't remember specifics about
 9 it, but I think there were some people who shared my
 10 view not about the integrity, but about the
 11 complicated mechanisms which were being suggested
 12 for completing some of these transactions.
 13 Q. Did you have any of those questions about the
 14 Forbes acquisition?
 15 A. You know, I don't remember much about the
 16 Forbes transaction. My only recollection was that
 17 one meeting that I had and I don't remember anything
 18 else about that. I don't remember seeing any papers
 19 on that Forbes transaction to be honest with you.
 20 Q. Did you have those kinds of concerns about
 21 the Hahnemann transaction?
 22 A. Have any concerns about it?
 23 Q. The kinds that you mentioned about the --
 24 A. I don't think so.
 25 Q. You mentioned earlier that you don't recall

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1 Ralph W. Brenner, Esquire
 2 ever speaking with Mr. Buettner at Coopers &
 3 Lybrand. Do you recall speaking or hearing --
 4 speaking to or listening to anyone else from Coopers
 5 & Lybrand during the course of your time at AHERF?
 6 A. No.
 7 Q. What was your view, if any, while you were on
 8 the audit committee of the role of an outside
 9 auditor?
 10 A. I viewed them as perhaps the most important
 11 facet of supporting staff that a board member,
 12 trustee, could have. It is in my judgment the
 13 ultimate guardian of the financial management of the
 14 enterprise and, while many of the board members
 15 probably are sophisticated in handling financial
 16 matters, many are not and therefore they look to the
 17 auditors to bring to their attention any concerns,
 18 any new procedures, any new materials which they may
 19 have learned about so that the board can consider it
 20 and react and make intelligent decisions as to how
 21 to proceed. And I relied -- I always have relied
 22 heavily on them, the auditors, in every position I
 23 have ever been in.
 24 Q. Did you understand that auditors in turn
 25 relied on company management or, in this case,

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1 Ralph W. Brenner, Esquire
 2 not-for-profit organization management?
 3 MS. MEADEN: Objection as to foundation.
 4 A. I certainly understand that the auditors must
 5 rely on receiving the information necessary and to
 6 learn and gain the information necessary from the
 7 business people so that they can appropriately
 8 conclude their audits, but I also think it is up to
 9 them to press hard and, if they perceive any
 10 irregularities or questionable practices, that they
 11 should be called to the attention not only of the
 12 management, but of the board.
 13 Q. Are you aware at all of Mr. Abdelhak ever
 14 having used any AHERF funds with respect to his
 15 divorce?
 16 A. No.
 17 Q. While you were on the AHERF board of
 18 trustees, did you ever have any concerns about the
 19 number of people on the board, too many or too few?
 20 A. No, I thought it was an appropriate number.
 21 I don't remember what it was. I would be guessing.
 22 25? Just guessing.
 23 Q. Did you ever believe that sometimes the AHERF
 24 board meetings didn't last long enough to get
 25 through all the materials?

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1 Ralph W. Brenner, Esquire
 2 MS. MEADEN: Objection as to form.
 3 A. You have to remember that I was new on the
 4 board in eighty -- '93 or 4. I can't remember. It
 5 was an old established board and going to Pittsburgh
 6 with the board consisting of 90 percent of
 7 long-established board members, one did not question
 8 the operations which presumably had been in effect
 9 for some period of time. That did not mean they
 10 didn't question the items that came before us, but
 11 in terms of the length of the board meetings, the
 12 agenda for the board meetings and things like that,
 13 certainly for the first couple of years it took a
 14 while -- and, as I say, you could ask me now the
 15 names of all those board members and I bet I
 16 couldn't give you half of them, a quarter of them,
 17 simply because I would -- you would attend a
 18 meeting, fly out, spend an hour and a half maybe at
 19 the meeting. If you wanted to get back to the
 20 office, you didn't stay for lunch, so you went back
 21 to the office. And so the meetings generally
 22 covered the items that were on the agenda. They
 23 certainly got longer as the problems got more
 24 difficult.
 25 Q. Let me show you a document that even though

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1 Ralph W. Brenner, Esquire
 2 it is not written on here I believe it has been
 3 previously marked as Exhibit 1990, and, for the
 4 record, this is the minutes from meeting of the
 5 committee of trustees of AHERF dated October 10,
 6 1997.
 7 Mr. Brenner, you are listed here as
 8 attending via telephone conference. I don't think I
 9 asked about this committee before. Do you remember
 10 being on the committee of trustees?
 11 A. No. What did we do?
 12 Q. Well, let's see.
 13 A. Ah, yes. This is where he created what I was
 14 trying to recall as the -- what is it? The eastern
 15 region -- the Allegheny University Hospital's
 16 eastern region, AUH. Remember you asked me if --
 17 Q. Uh-huh.
 18 A. It was at this point that he felt that there
 19 were too many meetings I guess, too many duplication
 20 of time and effort and so he was establishing some
 21 new boards which I guess by the date of this, once
 22 again, had very little, if any, activity. They met
 23 -- I can recall just really one special meeting.
 24 There were other meetings when they were talking
 25 about the bankruptcy.

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1 Ralph W. Brenner, Esquire
 2 Q. "They" meaning AUH Eastern Region?
 3 A. Right.
 4 Q. And the "he" you are referring to is Mr.
 5 Abdelhak?
 6 A. I'm sorry?
 7 Q. The "he" you are referring to, the "he" did
 8 this, was Mr. Abdelhak?
 9 A. Yes, he's the one who suggested this. Well,
 10 it may have been with others. He may have consulted
 11 others, I don't know, but he was the one who I
 12 believe was given credit for the suggestion and I
 13 can't believe this would have occurred without his
 14 blessing.
 15 Q. If you look on the second page of this
 16 document under "Proposed Corporate Restructuring" --
 17 A. Where is this?
 18 MS. LANGER: Paragraph B.
 19 A. Middle paragraph?
 20 Q. Right. It says, "Mr. Abdelhak presented for
 21 discussion a proposed governance restructuring. He
 22 noted that as the AHERF system has grown, the size
 23 and complexity of the governance structure has
 24 increased expedientially. He further noted that
 25 many trustees have complained about the amount of

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1 Ralph W. Brenner, Esquire
 2 time required to attend the various governance
 3 meetings as well as the duplication of presentations
 4 and actions."
 5 Were you one of those trustees who
 6 complained that he is referring to, do you know?
 7 A. I don't think --
 8 MS. MEADEN: Objection as to foundation
 9 and form.
 10 THE WITNESS: I'm sorry.
 11 A. I don't think I complained to anybody, but I
 12 was aware of that. I had suffered from that myself;
 13 otherwise, I would have gone to some of the audit
 14 meetings or I would have gone out to the Pittsburgh
 15 board meetings, which I didn't attend. It was just
 16 too much to do. And, once again, once you get into
 17 this late '97 period, things are starting to stir up
 18 a little bit and I think one of his reasons for
 19 trying to distill this down was to try to reduce the
 20 number of some of those meetings for a variety --
 21 not only the trustees but his own management.
 22 Q. And why do you think that he would want to do
 23 that?
 24 A. I would hope he would want to do it to try to
 25 help the trustees and management or maybe he felt by

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1 Ralph W. Brenner, Esquire
 2 the multitude of meetings he was not getting the
 3 benefit of the help of the trustees who could not
 4 participate in all of those events.
 5 Q. Did the changes in -- first of all, did these
 6 changes actually take effect?
 7 A. Some of them he tried to take effect. As I
 8 say, in my mind it is one of those sort of futile
 9 let's try and do something. One of the -- you will
 10 note here a question was raised as to whether the
 11 women's hospital like St. Christopher's should have
 12 a separate board and at the same time he wanted to
 13 change the name of St. Christopher's to Allegheny
 14 St. Christopher's. Every other hospital here was
 15 Allegheny Graduate, Allegheny Hahnemann, Allegheny
 16 -- everybody Allegheny, and I threatened to resign
 17 from the board. I said it has to be St.
 18 Christopher's. St. Christopher's is the name it is
 19 known by. St. Christopher's has the reputation, and
 20 if you are going to change that name, you are in
 21 effect changing what I believe to be one of the
 22 assets of this, and he backed off. But it was
 23 during this period that he was making a variety of
 24 changes like this.
 25 Q. In your view did these changes, the ones that

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1 Ralph W. Brenner, Esquire
 2 of the board?
 3 A. Well, they certainly had the titles.
 4 Q. What do you mean by that?
 5 A. Well, you know, president of U.S. Steel,
 6 president of a bank, president of Westinghouse.
 7 There were a whole bunch of very significant titles
 8 of people and many of them were, you know, highly
 9 respected, certainly one would think -- I considered
 10 it an honor to be able to be with that board and I
 11 certainly believed that it was -- they were being
 12 generous in letting me join a very well thought of
 13 organization.

14 I mean when I joined, it was -- there
 15 were plaudits around Philadelphia that I would have
 16 been asked to join the board and it was a very nice
 17 thing to have happen and, as I say, it gave me an
 18 opportunity to do something for St. Chris in an area
 19 where it would be difficult to penetrate a huge
 20 organization.

21 Q. Did you have a view when you joined that
 22 board as to the sort of collective business acumen
 23 that the members of the board had?

24 A. Very hard to judge that because so much of it
 25 is -- you know, I had a limited expertise in areas

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1 Ralph W. Brenner, Esquire
 2 and if you were to ask any of those board members,
 3 they would probably say the same thing about me. He
 4 probably knows something in the legal area but
 5 clearly what does he know about a new fiduciary
 6 arrangement of some sort?

7 Q. At the time that you joined the board, were
 8 you aware that Coopers & Lybrand were the outside
 9 auditors for AHERF?

10 A. I certainly did.

11 Q. And how is it that you became aware of that?

12 A. They were a factor in my joining the board.

13 Q. Could you explain to me how?

14 A. In the days before Allegheny came up, St.
 15 Christopher's decided that it needed new auditors,
 16 and I, along with other members of my board and
 17 management, interviewed virtually every substantial
 18 accounting firm certainly in the city and that was
 19 all the big ones and decided conclusively that the
 20 most talented and the most experienced in hospital
 21 management area was Coopers & Lybrand and so we
 22 hired them and I interviewed Ernst & Ernst, you name
 23 them, Touche Ross, did them all.

24 Q. And you hired the Philadelphia office of
 25 Coopers & Lybrand for St. Christopher's?

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1 Ralph W. Brenner, Esquire

2 A. Yeah, I think so.

3 Q. And how is it that that played a factor in
 4 your decision to join the AHERF board?

5 A. Well, I certainly looked at some of the
 6 annuals. I was provided I think with some early
 7 background materials which I asked for, and amongst
 8 those were the statements of recognition that
 9 Coopers & Lybrand were doing it and obviously that
 10 was a comforting thought because I thought I know
 11 how they operate.

12 Q. Earlier Mr. Friesen asked you about what your
 13 view of the role outside auditors play in an entity
 14 and you said something to the effect that they are
 15 the ultimate guardian of the financial management?

16 MR. FRIESEN: Objection.

17 A. They are the ultimate guardian -- I thought I
 18 said they were the ultimate guardian in the eyes of
 19 the board of the management of the financial affairs
 20 of the corporation simply because they are an
 21 independent force who are looking at the numbers.
 22 True, we had responsibility for those, but heavy
 23 reliance would be upon the accountants, who we are
 24 much more experienced and sophisticated and
 25 knowledgeable, particularly when they are

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1 Ralph W. Brenner, Esquire

2 experienced in the hospital field. And so -- on the
 3 account side. So I think obviously we all tried to
 4 do as much as we could, but if one of our business
 5 people would say something and we questioned it, we
 6 would always try and ask, you know, "Was this run by
 7 the accountants?" I always asked that question.

8 Q. At AHERF you are saying?

9 A. Yeah.

10 Q. And what was the response to that question
 11 when you asked it?

12 A. Sometimes yes; sometimes no.

13 Q. And if it was sometimes no, did you request
 14 that they then run it by the accountants?

15 A. Well, maybe I would say -- I'm not sure.
 16 Maybe I would say maybe "You ought to have them look
 17 at it," and whether they did or didn't, I don't
 18 know.

19 Q. And why do you place reliance on the fact
 20 that they were an independent force, "they" being
 21 the outside auditors?

22 MR. FRIESEN: Objection.

23 Q. What comfort did that give you?

24 MR. FRIESEN: Objection.

25 A. Well, management obviously is always charged

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1 Ralph W. Brenner, Esquire
 2 with trying to achieve the highest results and in so
 3 doing sometimes are prone to be a little less
 4 careful than they should be. Board members likewise
 5 are sometimes a little less knowledgeable and a
 6 little less careful in the review of the materials
 7 that are provided to them. And thus, if they are
 8 busy and they don't really get a chance to look at
 9 them, if something comes in and says it has been
 10 approved by the accountants, that gets you off the
 11 hook, and so both in terms of how -- whether
 12 management was on stream or whether the numbers were
 13 on stream, so I think you look very carefully to
 14 that. It has to be some backdrop of reliance which
 15 you can have which takes you outside the people who
 16 are actually participating in the benefit and who
 17 may not have the knowledge and that I view as the
 18 board and management and we both make mistakes.
 19 Q. At any time during your tenure on the AHERF
 20 board, did the outside auditors ever indicate that
 21 there was any question about the accuracy or the
 22 fairness of the representations of the numbers that
 23 were contained within AHERF's financial statements?
 24 MR. FRIESEN: Objection.
 25 A. I don't recall, but they may have already

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1 Ralph W. Brenner, Esquire
 2 given that information to the management and changes
 3 may have been made before those documents were
 4 ultimately seen by the board.
 5 Q. But you as a board member --
 6 A. No.
 7 Q. -- have no recollection --
 8 A. No.
 9 Q. -- of ever hearing that from the outside
 10 auditors, correct?
 11 A. No.
 12 Q. No, I'm not correct?
 13 A. No, I never heard from them.
 14 Q. Just to make sure we're clear.
 15 Did you have an understanding that
 16 Coopers & Lybrand had some expertise in auditing
 17 healthcare entities?
 18 A. They certainly did when I interviewed them.
 19 And they were clearly the superior accounting firm
 20 in this area.
 21 Q. In this area --
 22 A. And they were not a client of mine or this
 23 firm. We independently looked at all of them. In
 24 fact, we have represented a number of the big
 25 accounting firms, but we were looking for a

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1 Ralph W. Brenner, Esquire
 2 particular expertise in some people who were most
 3 experienced in this area and it was clear not only
 4 to myself but to Miles Turtz, Tony Gigliotti and
 5 others who were on the board at that time that
 6 Coopers were the best.
 7 Q. Do you recall generally speaking when it was
 8 that you interviewed Coopers & Lybrand in connection
 9 with St. Christopher's outside auditing needs?
 10 A. Probably in the early '80s.
 11 Q. Early '80s.
 12 You also responded to Mr. Friesen's
 13 question about the role that outside auditors played
 14 in your mind by stating that you believed it was up
 15 to the outside auditors to press hard and to bring
 16 questions regarding practices not only to management
 17 but to the board?
 18 A. Correct.
 19 Q. That's correct?
 20 A. Yeah.
 21 Q. And what types of things in that regard did
 22 you expect the outside auditors to bring to the
 23 board of AHERF?
 24 A. Well, I think -- and, as I say, the one
 25 example that I have is that -- and I am so getting

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 2 stupid that I can't remember the name of that.
 3 There is a procedure that goes through when the
 4 accountants, before they issue their final audit,
 5 and the management get together. It is not the
 6 management letter, but they discuss suggested
 7 changes to either the auditing procedures or some of
 8 the -- whether there are -- certain things are be
 9 accurately reflected back and forth and there are
 10 discussions and those matters are usually resolved
 11 between the two parties and ultimately the audited
 12 statements come out, and what I was alluding to when
 13 I made that comment was that to the extent that the
 14 accountants see anything which they view as
 15 potentially a problem, might be considered a problem
 16 if read later on, anything like -- even if it's a
 17 nit, and some of them were nits, you ought to be
 18 selling -- you ought to put the name of three
 19 officers at the end of this thing instead of one,
 20 that ought to be raised and they are obviously
 21 skilled in knowing what is appropriate and what
 22 changes should be made and my recollection was that
 23 they were made. And this discussion that I had on
 24 the phone during that board meeting related to those
 25 kinds of things. It had nothing to do with anything

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2 like, okay, there is something hanky-panky going on
3 anywhere. It was solely related to the kinds of
4 cosmetic things which should be achieved and agreed
5 upon by the client and the accounting firm.

6 Q. Well, if Coopers & Lybrand had found material
7 misstatements in the financial statements that were
8 presented to them by AHERF management for audit,
9 would you have expected Coopers & Lybrand to bring
10 that to the attention of the AHERF board?

11 MR. FRIESEN: Objection. Calls for
12 speculation.

13 A. Any semblance of concern in that area I would
14 ask for an intensive further investigation and
15 documentation before any further discussion was held
16 of that.

17 Q. But my question really is more preliminary
18 than that, which is would you have expected them to
19 bring it to the attention of the board in the first
20 place?

21 MR. FRIESEN: Objection.

22 A. Yes, I would.

23 Q. And if Coopers & Lybrand had found
24 intentional misstatements in the financial
25 statements that were presented to them for audit,

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2 A. Well, I would expect them at least to bring
3 it to the attention of the chief executive officer
4 first before -- and ultimately, if there was a
5 problem, then it probably should go to the board.

6 Q. Mr. Brenner, could you bring your --

7 VIDEO TECHNICIAN: Your hands are
8 blocking the microphone, Mr. Brenner.

9 Q. And if Coopers & Lybrand had found during the
10 course of their audit of AHERF's financial
11 statements something that caused them to question
12 the integrity of AHERF's financial management, would
13 you have expected Coopers & Lybrand to bring that to
14 the attention of the board?

15 MR. FRIESEN: Objection.

16 A. Once again, I would expect them to -- there
17 is the audit committee and I would expect them to
18 bring it to the audit committee and probably to the
19 chief executive officer.

20 Q. The audit committee is made up of board
21 members though, correct?

22 A. Yes, and I don't know if there were any
23 financial people on there from AHERF. I don't know.

24 Q. You mean inside directors?

25 A. Yeah.

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2 would you have expected them, "them" being Coopers &
3 Lybrand --

4 A. Recognizing this is a hypothetical, yes, I
5 would.

6 Q. -- to the committee?

7 MR. FRIESEN: I have to get an objection
8 in there somewhere.

9 Q. I have to get a question in there somewhere,
10 so if you could wait until I finish my question
11 completely and then we will give Jeff the
12 opportunity to object and then you can answer it.

13 But my question is, would you have
14 expected Coopers & Lybrand to bring their suspicions
15 of intentional misstatements, if they had found some
16 during their audit, to the attention of the board?

17 MR. FRIESEN: Objection.

18 A. Yes.

19 Q. And if you -- would you have expected that
20 Coopers & Lybrand, if it had concerns about the
21 competency of financial management as uncovered
22 during their audit of the financial statements,
23 would you have expected them to bring that to the
24 attention of the board?

25 MR. FRIESEN: Objection.

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2 Q. And if Coopers & Lybrand had uncovered
3 something that indicated fraudulent conduct on the
4 part of AHERF's financial management during the
5 course of their audits, would you have expected
6 Coopers & Lybrand to bring that to the attention of
7 the audit committee or the board?

8 MR. FRIESEN: Objection.

9 A. I would.

10 Q. Do you have an understanding of what the term
11 "clean opinion" means with respect to financial
12 statements?

13 A. I've heard of it and I'm not certain
14 precisely what that may mean today in terms of a
15 clean opinion. If somebody gives it, I guess it's
16 the auditors.

17 Q. Well, let me ask it this way: Was it your
18 understanding that a clean opinion was an opinion
19 from the outside auditors stating that their audit
20 revealed that the financial statements were fairly
21 and accurately presented?

22 MR. FRIESEN: Objection.

23 A. Now what's the question?

24 Q. My question is, was that your understanding
25 of what a clean opinion from an auditor is?

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 2 MR. FRIESEN: Objection.
 3 A. Well, I didn't have an understanding.
 4 Q. Okay.
 5 A. I had heard of the term and I am assuming
 6 that it meant a clean opinion from somebody,
 7 presumably the auditors, as to the financial records
 8 of the company.
 9 Q. Did you have any understanding as to what the
 10 term "adverse opinion" means with respect to audited
 11 financial statements?
 12 A. No.
 13 Q. Now, if Coopers & Lybrand had come to the
 14 audit committee or the board of which you were a
 15 member and indicated that the fiscal year 1996 or
 16 1997 financial statements that had been presented to
 17 them for audit had been intentionally misstated by
 18 management, would that have concerned you?
 19 MR. FRIESEN: Objection.
 20 A. Obviously it's a hypothetical as far as I'm
 21 concerned because I had no knowledge of that.
 22 Obviously I -- it goes back to any irregularity. My
 23 expectation would be that we would hear about it.
 24 Q. And if you had in fact heard about it, you
 25 would have been concerned about that, right?

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 2 A. If I had heard about it, I would have
 3 embarked on an intensive investigation immediately
 4 asking the company to do that.
 5 Q. It wouldn't have been something that you
 6 would have ignored, correct?
 7 A. Absolutely not.
 8 Q. And you would have asked -- I'm sorry -- you
 9 said management to embark on an investigation?
 10 A. Yeah, I would have asked them to investigate
 11 immediately, get from the auditors precisely all the
 12 information that they had so that we had an
 13 opportunity to view that and make a judgment
 14 ourselves as to whether or not there was indeed the
 15 kind of irregularity they were alluding to.
 16 Q. And once that investigation was completed and
 17 the results were presented to you, you would have
 18 had various options --
 19 A. To act in some way.
 20 Q. Right.
 21 MR. FRIESEN: Did you finish?
 22 Q. You would have had various -- let me back up
 23 and we will start again to just make sure I get a
 24 clean record here.
 25 Once the investigation was completed and

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 2 the results of the investigation were presented to
 3 you, you would have had various options as to what
 4 course of action to take, correct?
 5 MR. FRIESEN: Objection.
 6 A. Or one being no action.
 7 Q. That's right.
 8 A. Obviously you can do an investigation and you
 9 make a determination as to the authenticity or
 10 credibility of the alleged activity.
 11 Q. And if you found that the auditors were
 12 mistaken, you may decide that you would want to get
 13 a new audit team in there, correct?
 14 A. That's one option.
 15 Q. And another option would be if the
 16 investigation found that the auditors were correct,
 17 you might have asked them to expand the scope of
 18 their audit, correct?
 19 A. Correct.
 20 Q. Or you might have decided to fire management,
 21 correct?
 22 MR. FRIESEN: Objection.
 23 A. You can do a variety and many other things.
 24 Q. And you would have -- you personally as a
 25 board member would have followed whatever prudent

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 2 course you thought the investigation led you to,
 3 correct?
 4 A. Absolutely.
 5 Q. Do you have any understanding as to what
 6 generally accepted accounting principles are or
 7 GAAP?
 8 A. Yeah, about, yeah. I mean I'm aware of them
 9 and I -- they keep changing.
 10 Q. Right. And tell me what your understanding
 11 of GAAP is.
 12 A. I cannot articulate what they are, but I am
 13 aware generally of those principles.
 14 Q. Right, and I'm not asking you for specifics
 15 of what the GAAP principles are.
 16 A. Well, I already told you I didn't know, so
 17 feel free to ask.
 18 Q. I would just like to know what your general
 19 understanding is as to what those principles are.
 20 A. Yes, I understand that there is through the
 21 accounting industry a very carefully crafted set of
 22 regulations and rules with respect to appropriate
 23 accounting procedures, and those are, I think,
 24 publicized and are available to all financial
 25 interested persons.